

SEDGWICK COUNTY
BOARD OF ZONING APPEALS

MINUTES

May 3, 1999

The regular meeting of the Sedgwick County Board of Zoning Appeals was held at 3:30 p.m. on May 3, 1999, in the County Commission Room, 3rd Floor, Sedgwick County Courthouse, 525 N. Main, Wichita, Kansas.

The following members were in attendance: Chairman, GARY WILEY, KATHLEEN GIDEON, and JANA MULLEN. GRANT TIDEMANN was absent.

The following Planning Department staff members were in attendance: Secretary, DALE MILLER, and Recording Secretary, ROSE SIMMERING.

Also present were Glen Wiltse, County Zoning Administrator, George J. Bloesing, County Code Enforcement and Michelle Daise, Assistant County Legal. Roger D. Hughey, Attorney, for the County Board of Zoning Appeals. Ken Woodard, County Appraiser.

WILEY: Called meeting to order at 3:30 p.m. Swearing in of all persons present that will give testimony behind the podium. Dale is presenting for staff?

Tape not working.

MILLER: The applicant's request to defer the first agenda item CoBza 2-99.

MOTION: MULLEN moves and GIDEON seconded to defer case CoBza 2-99 until the June 7th, 1999 meeting.

MOTION CARRIES 3-0.

MILLER: Presents slides and reports on CoBza 1-99.

WILEY: Would the County like to present their side next?

DAISE: It is my understanding that it is the applicant's burden on this and since it is their appeal. We would certainly welcome them to go first since it is their burden on this

JAMES R HANSON, ATTORNEY: Appearing on behalf of appellant's William and Darlene Scott. This is an Appeal from a letter from the Director of Code Enforcement who I understand is also the Zoning Administrator. We are a little uncertain about the nature of the letter from

which we are appealing because all it does is render an opinion that this property has been since 1985 a home occupation and then suggests that we proceed to appeal if we disagree. We do disagree and we do believe it to be a non-conforming use basically which has existed there on that property since at least 1959. I did not see on the Agenda, which I received, a copy of Mr. Wiltse letter from which we actually appeal. I would like to ask the panel if they have a copy of his letter dated March 1, 1999 to myself? If not, I have some additional copies.

WILTSE: No we did not receive one either. I think Jim has extra's copies.

HANSON: I thought it would better if you could see actually what it is that we are Appealing. Our Appeal basically is that we believe this property is a non-conforming use, now light industrial which used to be Limited Industrial which use to be "E" Light Industrial. In essence the facts are and I will give you a little summary in advance. That in 1959, the property was acquired and devoted to use by an oil operator as his yard. That is where he kept his equipment and his pipe, and drilling equipment, and all his vehicles and did his maintenance and that sort of thing there. It was operated in that manner up through 1987 when my client's purchased the property. They purchased the property with the understanding that it was grandfathered as a non-conforming use. To be used in part for a plumbing business, where they could keep some of their equipment pipes and so forth. And also to assist their son who at the time did some body repair over on Seneca Street and they wanted to get him over there. They live down the street from this place and get him in. There is a big shop in the back and there is a dock in the back and that he could do his body repair and automobile restoration on the premises. In 1991, there was a challenge to their non-conforming use, which came out of both the Department of Code Enforcement and the Health Department, which at that time had the jurisdiction over enforcing some of these regulations. Ultimately in those proceedings it was determined that they could not show the non-conforming use had been abandoned and it was determined that it was still non-conforming "E" Light Industrial. The Administrator asked for a letter from the Scott's, my client's, describing their use of the properties. They did so and that was done through our office, in 1991. Listing this plumbing usage, the auto-restoration, the vehicle repair and the vehicle storage on the premises. Also who was that married and living in what had been offices, it is not really a residence in there but they have put up with it because of their limited financial resources it is not really a home that you would describe. So to go back through, the original use of it was by Schafer Armour Oil Inc., when they acquired it back in 1959 and first devoted it as a use as a yard for an oil operator. They stored their equipment there, they did their repair, stored pipe and all that sort of thing. In 1975, they sold it to another operator named Mr. Dewey Gressel, who was in the oil business there. I do not know whether they put up that original building that is on there in which there is a big shop bay, with doors which go into it and on the back of that a loading dock. I think they did that but it may have already been there when they acquired it. Mr. Gressel, when he owned it, he added on a string of offices, and little half baths on the front which were men and women bath's for use by his offices. He operated in there until 1987. I think the "RR" classification done in there was established either in 1983 or 1985. I have obtained from the County's files their notes showing 1983 this property being "E" non-conforming in 1983 with Mr. Gressel in there. So that may have been the date of the establishment. My clients then they had a home further south on Hydraulic and had wanted to do some building on there to put some of their plumbing business in there and they were denied that usage. So they saw that this property was on the market, they bought it and also had this usage for their son of which I have

spoken. At the time that they bought it in there, this property to the south was not platted or developed and I think neither to the west as residential. In fact I think there was operated skeet shooting or trap shooting range there on the south of their property at that time. When they purchased it they intended fully to maintain the non-conforming, light industrial type use and to use it for their plumbing business. They did in fact store some of their backhoe equipment, some of their pipe, and had vehicle maintenance and that sort of thing done over there. They also wanted their son also to do this business of restoring and repairing vehicles. He does some of it for himself, he likes the cars and then he re-sales them. He does more of it on a contract basis for people who have bought an old car, know his reputation and want to have that car restored. If you have seen them he does a beautiful job upon them. In 1989 and 1990 they platted these properties to the south and I believe to the west. They started developing these residences in there. My clients and their other son Todd were living in there as a bachelor pad before Keith moved in there. So the resident was not the one doing the auto repair business. Then after the platting process, they started the development in 1991. They started getting a series of letters from Code Enforcement complaining about it. Ultimately then in September, Curtis Reddening wrote that letter that says that Mr. Hancock, then Director of Zoning Administration had determined that the non-conforming use had been abandoned and that these people had to remove these cars and this other stuff and cease those types of operations on premises. The Code Enforcement made an investigation, and it was my understanding from reading the file, it looks like they talked to Dewy Gressel. At the time and they made a determination that it could not be shown that the non-conforming use had been abandoned and apologized to our office, and asked for this letter which is attached to your materials. From Mr. and Mrs. Scott describing their use of the premises, they describe it fully that their son, Keith, lives in there currently and that he repairs and restores these vehicles. And that they use it in their plumbing business for storage and I think also for their vehicle repair because this young man Keith also works in their plumbing business. That went along in that fashion until early last year at which time they received a letter from the Department of Code Enforcement complaining about their vehicles, essentially, the same thing that had happened in 1991. We responded describing what had happened in 1991 and sent copies of materials out to Code Enforcement. We tried to indicate in our letter that we could improve the appearance of the place maybe. The next thing we got was a summons over in County Court. Then reviewing the code the way that it was amended in 1986, I thought well it provides for a registration of your use. I wrote the letter and filed the registration of a non-conforming use there I believe that it was in May 1998 describing the usage as it had been for the plumbing business and the auto repair and restoration business. Really I had heard nothing from that. If you will read my letter, I took the position then, as I do now. That the proceedings in 1991, when they fully investigated and made complaint's against us and determined that the usage, which, is the same that it is now was in compliance. They could not show that the non-conforming use had been abandoned and it still continued it had been going on when those residences moved in there next door and so our position really is that that constituted a registration. Nevertheless, I went ahead and filed a new registration, although really as far as I can tell that has not been acted upon. We proceeded through the County Court and ultimately worked out a disposition of the case over there hoping that we could get this resolved with the Zoning Administrator. The disposition over there was a dismissal with two counts. No contest to one of the counts and that was taken care of. Then we received this letter from Mr. Wiltse, describing this as a home occupation. I do not know where it comes from 1985. My client's did not own it until 1987. You have to have a home occupation consisting of automobile restoration

or vehicle repair. You have to meet certain standards in size and distance from dwelling and so forth that we are concerned that we do not meet. It is really not adjacent to a residence there. They are actively seeking other quarters and would not stay there unless they absolutely had to financially.

HANSON: What little living quarters or offices there are they are really just adjacent to the business that was there. We do not see how it can be construed as a home occupation. We took to them our "Schedule C" showing that it had been treated as a business on Keith Scott's income tax return from the year 1987 on. But they still have taken the position that this is a home occupation. Well if it were a home occupation that would mean that somebody would have to reside there in order to carry on the business. It would destroy the value of this property. I have an appraisal here in 1991 from Dean Bossart, which shows pictures showing the same operation going on at that time. The value is dependent on the continuing non-conforming use in Mr. Bossart's appraisal. You won't be able to transfer it. I guess the Scott's would have to move over there to do anything on the premises. It is totally improper to deny the continuance of the non-conforming use of this property as Limited Industrial. You can't by all these changes that have been made in the code in the intervening years. You can't change legally their rights in there on that property and that is what is attempting to be done here. I thank you for your consideration.

WILEY: Are there any questions for Mr. Hanson? I do have one question. This letter from the Sedgwick County Health Department, regarding Mr. Gressel's sale of the property in 1984, have you read that letter?

HANSON: Yes, and that is not accurate.

WILEY: This is not accurate?

HANSON: The year 1987 was the year that Mr. Gressel sold the property.

WILEY: Not in 1984?

HANSON: No Sir.

WILEY: He sold directly to the Scott's?

HANSON: I have a copy of the deed here if anybody would like to see it.

WILEY: Can you tell me, why there appears to be a twenty-four month period, supposedly that this operation did not exist on this property?

HANSON: What they were attacking at that time was a claim that Mr. Gressel did not operate on that property for some period of time. He bought a new place down south and west of Haysville, but he was actually still in this property and was operating. I think that is what was actually investigated at that time.

WILEY: So that is where they come up with the twenty-four month period. Do you think that there was no activity?

HANSON: That they thought there wasn't activity. But when they looked into it that could not be established.

WILEY: Any other questions? Thank you. Anyone else here to speak in favor of this particular case? I see one gentleman. Would you approach the Board?

DALE HORTON, Real-estate Broker, Appraiser and certified in the State of Kansas: I am not here representing the Scott's in any manner. I am not being paid. I own the ground north of the subject property that you are talking about. I am aware of the activity on that property for many years. I have never seen the property being used other than commercial industrial. The property while Mr. Gressel had moved out was also used for an overflow of Mr. Gressel's property. I mean of his other land that he had purchased. The dwelling was not occupied as an office a hundred percent. It is my understanding by talking to Mr. Gressel, and I had been in the building before, that the security system was still on for the protection of it. There was no business being conducted out of the building, but the land was being used as commercial industrial. There was no housing in this area. <Away from microphone>

WILEY: Will you please stay at the microphone?

HORTON: I am very sorry. There is now housing that joins my property on the south and on Mr. And Mrs. Scott's property on the south and on the west of them. My wife converses with them off and on, because I am by there and I know the folks. It is out in the country, established at what it was and is still being used in that manner except not oil. But we did not have so many neighbors and Mr. Hancock had a shooting range right next door to it and I am positive that was not zoned for that either. The thing is that now we have neighbors. I have talked to them and one of the men that lived next door to it is a retired City Official at one time. They throw things over the fence because they are out in the country. I am not here to complain, but I just want you know this was an office, this was commercial. My land is agriculture and now we have influx of suburban growth and we are being thrown upon with trash and such as that. So my comment is that we tolerate it and we try to work it out. I do not know where the problem has come along, because I know the Scott's had trouble back in the early 1990's with this same problem and I thought that it was solved too. I did not have to come up here then, and I am not here as being paid as a witness to this, it is a fact that they told me that they had the problem and I have been a neighbor and have no problem with them. The property has been sufficient as far as I am concerned. It is not dirty. It is out in the County, it is not in-town zoning with restriction etc. Anything else that I can do to help them I will be glad to do it.

WILEY: Anybody else here to speak in favor of this case? Seeing none I would entertain anybody that would like to speak in opposition to this particular case.

MIKE OWNES, 17801 S. HYDRAULIC COURT, the red does not properly indicate where that property is located on the chart for the record.

WILEY: How far off is it?

OWNES: The property is actually here. Right next to this residential area. There are houses here. This house is a residential house and the property is located at this location. That is all, basically I have to say at this point and time.

WILEY: Thank you. Anyone else here that would like to speak in opposition?

MICHELLE DAISE ASSISTANT COUNTY COUNSELOR FOR SEDGWICK COUNTY: I am here on behalf of the Zoning Administrator and Sedgwick County Code Enforcement. I am actually going to ask Mr. Wiltse who is the Zoning Administrator and who did write the letter that is before you, I am going to ask him to speak. If the Board is willing I would actually like to ask him some questions and take him through this process of how he made this determination if that would be appropriate with the Board.

WILEY: That would be fine.

DAISE: Can you explain to the Board how you came in contact with the property and the potential situation that was going on that property.

GLEN WILTSE, SEDGWICK COUNTY CODE DIRECTOR-ZONING ADMINISTRATOR FOR SEDGWICK COUNTY: Initially, the complaint came to our office for the inoperable vehicles. At that time we investigated and started looking through the old files that we had and found different letters that were written back and forth from the past Zoning Administrator and Legal Staff and outside Councils. One of our biggest problems was trying to determine how they actually made a determination because all there was basically, was this letter with no supporting documentation on it.

DAISE: Now with these letters, were you able to determine if a final decision had been made regarding the condition of this property and the type of activity that was going on? Were you able to tell if a final decision was made by you predecessor?

WILTSE: Basically, the only decision that I seen that was made was that they had been given or just allowed to continue as they had been operating.

DAISE: Based on that, why did you continue to pursue this matter? If you saw that some type of decision had been made? Why did you continue to investigate this or have your staff investigate it?

WILTSE: I saw at least a couple of different areas that I felt, that the original letter by Mr. Pike, the past Zoning Administrator had been written in error. One is that if the property had been used as residential along with the Light Industrial, that is a violation of the zoning code. You are not allowed to have residential in that zoning area at all. The other is that if you are going to operate, say like a body shop, that would be in most cases a less intensive use, combined along with the residential use. This shows me that it is being used in a less intensive use than what the original intent of the purchase and the use of the property has been.

DAISE: What I want you to do at this point is to explain to the Board, why you made the determination you did. That this was a rural home occupation. I want you to explain, why you say since 1985, and why you believe that the activity that is going on out there should not be allowed to just continue as a legal non-conforming use? It should only be allowed to continue as a rural home occupation?

WILTSE: From what we have seen, is that the property has been possibly vacant, even though it had been used for storage of whatever the previous owner had in 1985. Light Industrial allows a multitude of different types of businesses and the code allows no non-conforming legal uses. That if you change that to a less intensive use then you are not allowed to go back to a more intensive use at a later time without granting the new zoning for that. I felt that the residential, that threw it into a residential category. The rural home occupation is actually a less intensive use than what light industrial is also. Even though that the property does not meet 100% of all the requirements for rural home occupations such as possible setbacks, the acreage size, the uses are still less intensive than allowing it to continue as a Light Industrial or "E" classification of zoning. That is basically why we made the determination that we did. We do have maps dating back to I believe, 1983 to 1995. They show the original property in 1983 with it having a large amount of different items on it and then over the years it was reduced in the items on the property. Then I believe, in 1995, it increased. Possibly if you would like to see the maps.

THE BOARD IS HAVING WILTSE SHOWS THE MAPS.

WILEY: Mr. Wiltse, as a home occupation the repair of the automobiles with limitation of stored autos and the plumbing business would be a permissible use?

WILTSE: The automotive repair is. I would have to take a quick look but I believe that the plumbing business is too, but I would need to take a look at the zoning.

WILEY: They would have to be a home occupation by the owner's and not a son or relative?

WILTSE: That is correct. With the property being used as a residence, that is the reason why we put it into the rural home occupation. A less intensive use, even though it does not meet 100% criteria for the rural home occupation.

WILEY: To your knowledge, nothing had really changed other than the residential use prior to that time? Up until the residence moved in it was still a non-conforming use in your opinion.

WILTSE: To the best of my recollection, from what I have seen and the past records that we have, they just made a decision without any really documentation. It was in the file anyway.

WILEY: That is the 1991 decision.

WILTSE: It is also from talking to the Scotts, and their attorney, that this is not a full-time business. It is actually a part-time business. The letters that we have indicate that he had other

jobs outside of this here. So that even shows a higher degree of rural home occupation instead of industrial lower "E" classification in the zoning.

WILEY: Other questions?

HANSON: Have you made any attempt in your investigation to contact Mr. Gressel?

WILTSE: No.

DAISE: I would also like to have Mr. Bloesing come up and speak for just a couple moments. George Bloesing is the Inspector for Sedgwick County who has been working on this case. Both in relation to this matter, but also at the County Court proceeding that Mr. Hanson had referred to earlier.

GEORGE J. BLOESING – ZONING INSPECTOR FOR SEDGWICK COUNTY:

DAISE: Mr. Bloesing, Could you tell the Board how you got involved with this, and what your observations were of this property when you went out there?

BLOESING: Originally our office received a complaint, it was the inoperable vehicles on this property and two other properties in the neighborhood. One property to the west, and one property to the north, of this actual location. When I went out and did the investigation, I did observe and noted the inoperable vehicles, at all three places that were complained on. Letters went out to all three of them by Zoning Code. They were given a notification of what they were doing and what the violations were and what needed to be done to correct it. Also if the violations were not corrected within a thirty-day period of time that a citation would be issued. On several different times, I went to the property and I talked to Mr. Scott's son, the person, who I guess said that he lived there at that time. He explained that he was doing an auto restoration business at that time and location. Also, in all the times that I have been to the property, I have never seen any evidence of a plumbing business on the exterior or the building. I have never been inside the building but there has never been anything to indicate any plumbing business being conducted at that location. Again, Mr. Scott said that he was living there as a resident and doing part-time auto repair work there, body type shop type work.

WILEY: Any questions of George?

DAISE: I just want to go through a couple of things real quickly on this. I believe you have some letters before you that were part of the packet, and a part of this Appeal. The one that I would like to direct your attention to is the one that has a stamp on it of July 11, 1991, 8:50 a.m., it is a little beyond half-way through this packet of information. It is addressed to William J. Scott. Do each of you have a copy of that before you?

BOARD: Yes.

DAISE: Before I get into that, I want to explain a little bit about what I am doing here with this. The County has almost two different positions on this. Mr. Wiltse has taken the position that he

believes that a rural home occupation should be allowed on this property. He has indicated that the letters that he has looked, at in the past, that it appeared that the use had been abandoned. But, like he said it is not a very clear record. Mr. Hanson has also indicated that it looks like they did an investigation, these are the letters that we now have before us. None of those people still work for Sedgwick County. We are looking at what happened back in 1991 based only on letters. The first direction that he took was to say that we are going to allow rural home occupation. Because he does agree that there is some auto restoration and some automobile repair taking place on that property. There is also a residential area there that Mr. Scott's son is living in at this time and you have heard them talk about that. As a result, he felt that was the way to allow them to continue this part-time business that they are having, yet begin to bring this property into conformance with the county code. As you know the zoning code talks about non-conforming uses. Article 7, Sec A (2), talks about the policy of this code. It says that once you allow current activities that were taking place at the time that this code went into effect in 1985 County wide. They wanted to allow those to continue to exist and be put to productive use. Also the policy is to bring as much of these aspects of these activities into conformance as possible. What that means is that as things begin to decrease in the type of use, we want to keep them at that decreased level, so that it will begin to fit with the surrounding area. As you can tell there are a lot of houses that have been built up in that area the property is zoned for that. Most certainly the Scott's property had some other things going on at that property and the County allowed that to continue. But as that use began to decrease, the County wants that to stay at that decreased level so that it will fit in with the surrounding areas. The home occupation would allow them to continue the operations that they are doing out there at this time. But would also prevent someone else from coming in at a later time and purchasing the property and using it for commercial use without living there. Basically, what would be happening at that point, is we have someone living there now, and doing at least a part-time business there, if that property is sold, and is allowed to continue as a Light Industrial type use, no one would be required to live there. In fact no one should be allowed to live there because residential uses are not allowed in that area. What that means is that we would be going from something that has decreased, someone lives there, they are working on cars, and then all the sudden we would be going back to allowing something that is in a Light Industrial area, much bigger and more intensive use. That is completely in contradiction to this Code. The other thing that I want to point out is, this property as you've heard before was purchased in 1987 by the Scotts. This letter that is in front of you, if you will look about half way down the second paragraph where it begins, half- way through that line, it says "We have and are using." See about where that is? It is probably about half way through that second paragraph. It is the letter dated July 11, 1991.

BOARD: Yes.

DAISE: We have been using the property for storage and residential rental property since the date of purchase. This is four years after the date of purchase. This is the reason that we purchased the property. We are not using the property for a commercial business. This is Mrs. Scott's letter to the head of Code Enforcement at that time. Later on in that paragraph it also says that our married son lives there and works full-time elsewhere. He races cars and restores classic cars with his friends and the letter goes on from there. Basically, what this is saying is we did not buy it for commercial uses, we have not been using it for solely commercial uses for four years. That it is an abandoned use. In and of itself it had been abandoned for four years at this

time, according to Mrs. Scott's own language. Yet in October, after Mr. Pike said, you know I think I am going to allow you to continue what you are doing. Then, three weeks after that he makes a determination. Then they send a letter back that says, oh, we run a plumbing business. We use the property to store and maintain equipment and vehicles. To me it is very contradictory. I just want to point out at this time that it did go to residential and it was not solely commercial and therefore the use has been reduced and that is what the code wanted to happen. By allowing non-conforming uses, in time the code was set forth to reduce those and have a more conformance with the area as you can see there. Another point that I do want to make to you, you have heard Mr. Hanson talk about how determination was made by the head of Code Enforcement in 1991. And that his client's relied on that, and they thought everything was done, and you have heard this other gentlemen mentioned "I thought this was taken care of in 1991." While it is very frustrating for a resident to hear something from someone who is in charge of a County Department say, "You are ok and you can do what you want to do", the County is not bound by that. I am not saying that it is not frustrating, and I am not saying that is the best way to do business. But the Kansas Supreme Court in *Goodwin V Kansas City* dealt with this specifically, and it says, "It is not uncommon for municipal officers to erroneously advise landowners they may use land for a purpose which violates zoning ordinances. The general rule applied by the Courts in such instances is that a non-conforming use of land may not be established through such statements, as the officer is without authority to violate the zoning ordinance." While it is unfortunate that Mr. Pike may have written them a letter and said, "You can continue doing what you are doing", if he did that in error, the County at this time is not bound by that determination. In fact the County is responsible and is required to go out and make determinations to make certain that the property is in conformity with the surrounding area. The final thing that I do want to point-out is that you did hear Mr. Hanson, refer to this registration. As you are aware, I think this has been an issue before this Board before. Registration was required by January 1, 1997, to register non-conformities, as he indicated the registration form was filled out and was filed I believe in May 1998. It was an untimely registration. I believe that is all I have at this time. The County would simply ask that you uphold Mr. Wiltse's determination that this is a rural home occupation and that it not be expanded.

WILEY: Questions? You said that County Zoning went into effect in 1985 and the Scott's purchased the property in 1987. How do we automatically go to a home occupation without public hearings?

DAISE: A home occupation is allowed in the Zoning Code.

WILEY: I understand that, but, only through application, and meeting certain criteria. Isn't that correct?

DAISE: I might have Mr. Wiltse speak to that.

WILEY: That is not correct?

WILTSE: Actually there is a provision in the Zoning Code that gives us authority to review the type of business that is there. There is a list of different types of businesses with setback

requirements and acreage requirements and screening depending on the type of business and we can make that determination internally.

WILEY: This meets the criteria?

WILTSE: The acreage does not, but my point is that it is a less intensive use. So that allows us to go back to a less intensive type zoning use on the property.

WILEY: Thank you. Is anyone else here that would like to be heard in opposition?

BRAD ANDERSON HOMEOWNER ON 78TH Street South: This area was constructed. I purchased my house in 1995. Trying to determine where to purchase a home, again I looked at the zoning area. I was comfortable with the fact that this area was zoned as a residential area. I was comfortable knowing businesses and such would not be built up in and around a residential area. Back in I believe in 1996, there was a problem in an area, an individual had requested to zone something as light commercial because he had been operating that for a period time. We opposed that as the residence of the area, and I opposed it. We lost that case and I am just starting to run into a problem. I assumed that the purpose of the zoning was to keep residential areas in residential areas and keep commercial area in commercial areas. I am concerned that if this area goes into some kind of commercial production and that if somebody else and somebody will some day purchase this property after the Scott's, then they could possible build up some type of business in that region. That is my opposition.

WILEY: Questions of Mr. Anderson?

MULLEN: You bought your property in 1995?

ANDERSON: Yes. I did note that I did see that area as I drove by. I assumed that it was a residential area because looking at the zoning it was residential. There were some cars out there on the lot and it was somewhat unsightly, but some people do car work and so that is what I left it at.

WILEY: Anyone else here that would like to speak in opposition? We will bring it back to the bench.

MOTION: MULLEN moves that the Board recess to executive session to discuss the evidence that has been submitted.

ANDERSON: You asked for opposition, would I have an opportunity to give another comment?

WILEY: No Sir, it has been brought back. I am sorry.

HANSON: Would I not have a chance for rebuttal?

WILEY: Yes Mr. Hanson, approach the podium. We will withhold the motion.

HANSON: I do not want to beat on this but, first place I would like to present you with pictures from this appraisal which Mr. Bossart made in 1991. These were taken from the rear of the property showing the vehicles that were there at that time.

WILEY: This was in 1991?

HANSON: Correct. At the same time that the 1991 proceedings were going on, Mr. Bossart appraisal is dated October 17, 1991. Secondly, I would like to address the point made about Mrs. Scott's letter. After that letter was when the prior Zoning Administrator made his decision. That letter is in July and his decision is in October, so he had that before him and he knew that. The letter that we sent really constituted the registration that they are talking about. Lastly, I would like to address the fact of diminished use. You are permitted legally to use any non-confirming use in a lesser manner. Somebody in the future can not increase that. If we sell it they can't increase that use, they are limited to using it in the same manner that we our by law. So, if we've reduced the intensity of the Light Industrial, future owners can not increase it. That is the law. The County works to reduce the intensity and as they say they try to do that. There use to be in the Zoning Law a non-confirming use and there use to be an <> of a non-confirming use. That is the zoning people could limit the time that non-confirming use could continue. That was taken out of the law back in the late 1950's they didn't like it. You can't bring that into the law by your on regulations. They can't require us to diminish our use of the premises. That is all I have.

DAISE: I just want to clarify a couple of things after these last statements. Article 7, Section B4, talks about changed use of the zoning code. It does not limit it to a future owner/user. "A non-confirming use if changed to a to a conforming use or less intensive non-confirming use may not thereafter be changed back to a less conforming use than that to which it was changed." "May not thereafter be changed back." It does not say a future owner may not change that back. I do want to clarify that. I also want to clarify one thing. The County is not forcing Mr. Scott to lessen his use. The Scott's changed the use and they lessened the use and once that happens they are not allowed to increase the use and the County does have an obligation at that time to keep that use at that level.

MRS. WILLIAM SCOTT, APPLICANT: The letter that you are referring, as far as the terms of commercial. I thought when he asked me he meant heavy commercial. We have been using that for plumbing storage and repairing vehicles and mechanical maintenance on our own vehicles as well as his. So you are saying now that we are lessening that to a degree, and it is not being lessened. It is being used for the same purpose that Dewey Gressel used it for. I have a copy of a page that we got from the County that came with a letter, on non-confirming use and I do not have that B1 and B2 on here. He is saying that they are not responsible for what the County says from one person to another? How can we count on this being a home occupation? They can't come back and say what they said they are not to be responsible for? I do not understand that portion of it. This is really a business office across the front. It is not a residential as perse. They are living there very inconveniently because of their income and their medical expenses. Which would help with their expense besides renting the shop in the back. There are no bedroom closets. It is his and her bathroom. There is a kitchenette with a bar sink

and cabinets above it and below that are approximately 5 to 6 feet long. I do not know how you can say it is a home when it is not a home. It is still "E" Light Industrial if that is what it is classified at. I did not even know what they called it back when I wrote that letter in 1991. But I am not an attorney so I do not know what words to use. I can not even remember why I do not have a copy of that letter, why I wrote that letter to the County, evidently I had been talking to either Curtis Reddenington or the other guy that was in zoning at that time. If we have to change this and we ever decided to sell it, we would lose big time, because that is not what we bought the property for. Our intentional use was to keep it a grandfathered clause, whatever you want to call it non-conforming. If we don't the value is going to go way down. I don't think anybody would really agree to that situation. I would like to see it stay the "E" Light Industrial.

MOTION: MULLEN moves and GIDEON seconds that the Board recess for executive session, for twenty minutes so we will be back at 4:50 p.m.

MOTION CARRIES 3-0.

WILEY: We will call the meeting back to order. Mr. Wiltse, would you approach I have a couple of questions that I would like to ask? It is your opinion that you could administratively authorize a home occupation at this location for use of the automobile repair?

WILTSE: That is Correct.

WILEY: If this property is used for, I want to call it a contractor storage yard for plumbing supplies, this would also be included in this home occupation?

WILTSE: I looked at the Zoning Code while the executive session was going on and it does allow contractor storage with proper types of screening there.

WILEY: You are satisfied with the screening that is there, and that you could authorize the contractors storage yard as well?

WILTSE: That is my best belief. Yes.

WILEY: You would prepare a letter in that respect?

WILTSE: Yes.

MOTION: MULLEN moves and WILEY seconded that we uphold Mr. Wiltse's decision. After reviewing the maps, and the testimony, and the letters submitted by both parties and based upon this, I would like to make a motion to uphold his decision. With the incorporation of this letter that Mr. Wiltse will provide for the homeowner's for the home occupation, and the contractor and the automotive.

MOTION carries 3-0.

WILEY: Any other business, Dale?

MILLER: There are two quick items. Nothing that we have to take care of, technically under the By-laws, today would have been an election date. We are supposed to have the elections after the first meeting after May 1st. Since you have one more person to be appointed you may just want to wait until you get a full body and then have your elections if everybody is comfortable with the current officer's.

WILEY: Do we need a motion?

MILLER: No, as long as everyone is ok with that.

HUGHEY: I have a question for the secretary. Has the Board approved the minutes of the second Shelinbarger case?

WILEY: No.

SIMMERING: They are still being typed. So, I don't think so.

HUGHEY: This appeal was set for trial next Monday and the record is not finished yet. Those minutes need to be approved the next time you meet on June 7th, 1999. I would encourage you to do that.

WILEY: Dale will get that?

MILLER: We will get them done.

MILLER: The only other item. This is long range, apparently this is the same day that County Law has court proceedings most of the time. They are constantly juggling who is going to come and take care of this group. So they were wondering if you all will consider changing the meeting date to another date. That is just something you might want to think about.

WILEY: For future meeting dates, for the balance of the year, after June 7th?

MILLER: After you have thought about it and we talk about it and you decide whether you want to do that or not. Then what dates you will want to try and set. We will have to advertise and make those public notices before we make that switch.

SIMMERING: Does everyone have a meeting date schedule?

BOARD: Yes.

Meeting adjourned 5:00 p.m.